

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**TANYA E. JOHNSON**  
Claimant

VS.

**HARDEES OF TOWANDA**  
Respondent

AND

**HARDEES FOOD SYSTEMS**  
Insurance Carrier

Docket No. 214,203

## ORDER

Claimant appeals from a preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes. The Order, dated September 18, 1996, denied claimant's request for temporary total disability and medical benefits.

## ISSUES

The Administrative Law Judge found the claimant failed to prove by a preponderance of the credible evidence that she suffered an accidental injury arising out of and in the course of her employment. Claimant appeals that finding.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Appeals Board finds that the Order by the Administrative Law Judge should be affirmed.

Claimant seeks benefits for carpal tunnel syndrome which she alleges arose out of and in the course of her employment. She testified that she engaged in repetitive hand activities in the course of her employment. She attributes the onset of carpal tunnel syndrome to those activities. Claimant also acknowledges that her husband operates a mowing service. She testified that she had assisted two or three times in the summer of 1995 but had not done any mowing work in the summer of 1996. Respondent has countered claimant's testimony with a videotape showing respondent operating a push mower in August of 1996.

The Administrative Law Judge concluded:

"The Respondent has demonstrated that Claimant is not a reliable nor credible witness."

The Appeals Board gives deference to the determination of credibility of witnesses whose testimony is heard by the Administrative Law Judge. The Appeals Board also notes that the record does not contain a medical opinion indicating claimant's injuries were caused by her employment with respondent. For these reasons the Appeals Board concludes that the decision by the Administrative Law Judge should be affirmed.

The Appeals Board notes that the claimant also raises certain procedural issues. Specifically, the claimant points out that the preliminary hearing at issue in this case was the second preliminary hearing held. Respondent did not appear at the first hearing. Claimant also objects to the introduction of the videotape without foundation.

The Appeals Board concludes that these arguments do not raise jurisdictional issues. In appeals from preliminary hearings the Appeals Board is limited to review of issues listed in K.S.A. 44-534a and consideration of arguments that the Administrative Law Judge has exceeded his or her jurisdiction. K.S.A. 44-551, as amended. The Administrative Law Judge has jurisdiction to hold a second preliminary hearing and to admit the tape without foundation.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Nelsonna Potts Barnes dated September 18, 1996, should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1996.

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**BOARD MEMBER**

c: James B. Zongker, Wichita, KS  
Michael D. Streit, Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director